

**CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
DuPage County, Illinois**

505 N. County Farm Road
Wheaton, Illinois 60187-3907

TERENCE M. SHEEN
Associate Judge



Ms. Tamara L. Cummings, Esq.
Illinois Fraternal Order of Police Labor Council
5600 South Wolf Road, Suite 2268
Western Springs, IL 60558

Mr. Charles E. Hervas, Esq.
Hervas, Condon & Bersani P.C.
333 Pierce Road, Suite 195
Itasca, IL. 60143

Mr. Peter M. Friedman, Esq.
Holland & Knight LLP
131 S. Dearborn St., 30th Floor
Chicago, IL 60603

**SUBJECT: PETERSON V. VILLAGE OF OAK BROOK
11 MR 291**

Dear Counsel,

Please let this letter serve as the Opinion and Order of this Court in the above entitled matter.

BACKGROUND

In 2004, Stephen Peterson (“Officer Peterson”) became an Oak Brook Police Officer. (R2 at 219). Officer Peterson’s father is Drew Peterson, a former Bolingbrook Police Officer who has been a suspect in the disappearance of his wife, Stacy Peterson, since late 2007. (R2 at

219-220). The current charges filed against Officer Peterson stem from his actions following Stacy Peterson's disappearance.

On October 18, 2010, Chief Thomas Sheahan of the Oak Brook Police Department brought charges against Officer Peterson which asked the Board of Fire and Police Commissioners of the Village of Oak Brook ("Board") to terminate Officer Peterson's employment. (R1 at 1-19). Charge I alleged that Officer Peterson had violated 720 ILCS 5/31-1(a) and Oak Brook Department Rules 7.2, 7.3, 14.11, 14.25, 15.20, 18.2, 18.19, 18.36, 18.39, and 18.40 when he failed to alert law enforcement authorities, including the Oak Brook Police Department, that: (1) Drew Peterson took steps to conceal guns; (2) he had concealed Drew Peterson's guns in his home; and (3) Drew Peterson had given him checks totaling \$236,800 the day after Stacy Peterson was reported missing. (R1 at 12-15).¹

The Board held a multiple-day hearing. Officer Peterson testified on direct examination as follows. On October 29, 2007, Drew Peterson called Officer Peterson and informed him that Stacy Peterson was leaving him for another person and she was going on vacation. (R2 at 223). That evening, Drew Peterson informed Officer Peterson that Stacy Peterson's family had filed a missing persons report. (R2 at 224).

On the morning of October 30, 2007, Drew Peterson called Officer Peterson and informed him that Stacy Peterson's disappearance had made the news. (*Id.*). Drew Peterson wanted to give Officer Peterson his guns because the police would be searching his home and he did not want the police to find the guns. (R2 at 225, 230). Officer Peterson admitted that he accepted three guns from Drew Peterson and then placed the guns in his spare bedroom closet. (R2 at 225, 229). Officer Peterson felt that he acted appropriately in taking Drew Peterson's guns and had no obligation to inform law enforcement about the guns transfer. (R2 at 229, 234). Officer Peterson admitted that he did not know whether the guns had evidentiary value for law enforcement's investigation into Stacy Peterson's disappearance. (R2 at 235-236).

¹ Charges II and III concerned the legality of the gun given to Officer Peterson from Drew Peterson and Officer Peterson's alleged disclosures to third parties about the internal investigation. The Board found Officer Peterson not guilty of Charges II and III. (R1 at 168, 170); Board's Decision at 3.

Later that day, Officer Peterson went to Drew Peterson's house, where Drew Peterson informed him that he needed to take care of his four children if anything happened to him. (R2 at 230-231). Thereafter, Drew Peterson gave Officer Peterson three checks totaling \$236,800 and he was told not to deposit the checks until directed by Drew Peterson. (R2 at 231-232). Officer Peterson did not feel that Drew Peterson's actions raised any suspicion that he was involved in Stacy Peterson's disappearance. (R2 at 233).

On November 1, 2007, the Illinois State Police ("ISP") searched Drew Peterson's house. (R2 at 234). During the search, Drew Peterson informed the ISP that he had given three guns to Officer Peterson. (R2 at 238). Thereafter, Drew Peterson called Officer Peterson and directed him to deposit the checks. (R2 at 234-235). Following the search, the ISP contacted Officer Peterson. (R2 at 238-239). On November 2, 2007, the ISP interviewed Officer Peterson, who provided details about the guns transfer, but failed to disclose the money transfer. (R2 at 239, 241-242). Officer Peterson explained that he did not disclose the money transfer because he did not feel the information was pertinent to the ISP's investigation into Stacy Peterson's disappearance. (R2 at 242). Officer Peterson failed to disclose the checks until he testified before a grand jury on November 29, 2007. (R2 at 242-243).

On cross-examination, Officer Peterson testified that he took Drew Peterson's guns because they were his father's favorite guns and he was concerned that the guns would become damaged during the ISP's search. (R2 at 259). Officer Peterson explained that during police searches, law enforcement did not "tend to be very gentle with people's belongings." (*Id.*). Finally, Officer Peterson stated that Drew Peterson had given him the checks to help support Drew Peterson's children, in case he was given custody. (R2 at 267-268).

Sergeant Gary Lawson of the ISP testified that he had investigated Stacy Peterson's disappearance. (R2 at 287-289). During the search of Drew Peterson's home, Lawson explained that Drew Peterson had told law enforcement that he had given guns to Officer Peterson. (R2 at 291). Following the search, Lawson approached Officer Peterson and told him he needed to be interviewed in regards to the guns and Stacy Peterson's disappearance. (R2 at 294). Officer Peterson agreed to cooperate with the investigation. (*Id.*). During the interview, Officer Peterson stated that he did not know Stacy Peterson's whereabouts. (R2 at 302). Further, Officer Peterson had not informed Larson about the checks even though he had asked him if he

had any other relevant information concerning Stacy Peterson's disappearance. (R2 at 302-303). Lawson thought that the checks were relevant information for the investigation. (R2 at 303). Following the interview, Officer Peterson turned over Drew Peterson's guns. (R2 at 305).

Chief of Police Thomas Sheahan of the Village of Oak Brook Police Department testified that he suspended Officer Peterson after he became aware that Officer Peterson assisted Drew Peterson in hiding weapons, failed to cooperate with law enforcement, and received a large amount of money from Drew Peterson. (R3 at 361, 373). Sheahan testified that Officer Peterson should have contacted law enforcement after he received Drew Peterson's guns because the weapons could have been used in Stacy Peterson's disappearance. (R3 at 374-375). Further, Sheahan testified that Officer Peterson should have reported the checks he received from Drew Peterson to law enforcement. (R3 at 376-380). Sheahan concluded that Officer Peterson's actions had obstructed law enforcement's investigation into Stacy Peterson's disappearance. (R3 at 379-382).

The Board found Officer Peterson guilty of Charge I and terminated his employment as an Oak Brook Police Officer. (R1 at 169, 171). Officer Peterson appealed the Board's determination to this Court. In relevant part, this Court found that the Board failed to sufficiently explain how its findings were sufficient to establish a violation of 720 ILCS 5/31-1(a) and Oak Brook Department Rules 7.2, 7.3, 14.11, 14.25, 15.20, 18.2, 18.19, 18.36, 18.39, and 18.40.

Upon remand, the Board again found Officer Peterson guilty of Charge I and terminated his employment. (Board's Decision at 17). The Board found that:

Officer Peterson took possession of weapons from Drew Peterson for the purposes of preventing their discovery and seizure during a search by law enforcement authorities investigating Stacy Peterson's disappearance, and that Officer Peterson's failure to voluntarily disclose to the Illinois State Police and the Department that he had Drew Peterson's guns in his possession violated 720 ILCS 5/31-1(a) and Department Rules 7.2, 7.3, 14.11, 14.25, 15.20, 18.2, 18.19, 18.36, 18.39, and 18.40.

(Board's Decision at 3).

In relevant part, the Board found that Officer Peterson obstructed law enforcement's investigation of Stacy Peterson's disappearance when he accepted weapons from Drew Peterson, despite knowing that there was an active investigation into Stacy Peterson's whereabouts. (Id.). Specifically the Board found that Officer Peterson had: (1) taken possession of weapons from Drew Peterson in order to prevent their discovery and seizure during a search by law enforcement investigating Stacy Peterson's disappearance; (2) failed to disclose to the ISP and the Oak Brook Police Department that he had Drew Peterson's guns in his possession; and (3) concealed the fact that on October 30, 2007, Drew Peterson gave him three checks totaling \$236,800, and that Officer Peterson intentionally omitted to inform the ISP and the Oak Brook Police Department of this fact when asked if he had any additional relevant information related to the investigation into Stacy Peterson's disappearance. (Board's Decision at 4-13). The Board found that discharge from the Village of Oak Brook Police Department was an appropriate sanction for Officer Peterson. (Board's Decision at 13-17).

ANALYSIS

Officer Peterson's Due Process Rights

Officer Peterson argues that his due process rights were violated when the Board's decision, issued after remand by this Court, was prepared, in part, by two Board members who had not attended his hearing or viewed the evidence. (Officer Peterson's Brief at 6). Officer Peterson contends his case hinged upon his and other witnesses' credibility, therefore, one of the Board members present at his hearing should have submitted a report detailing his conclusions and recommendations with respect to credibility. (Officer Peterson's Brief at 6-7).

The Village of Oak Brook ("Village") responds that one of the Board members was present at Officer Peterson's hearing and heard all the evidence presented. (Response at 2). Furthermore, the Village notes that Board members do not need to be present during an administrative hearing. (Response at 3).

Procedural due process is afforded where the administrative agency considers the evidence contained in the transcript of the proceeding and bases its decision thereon. Pundy v. Department of Professional Regulation, 211 Ill.App.3d 475, 487, 570 N.E.2d 458 (1st Dist.

1991). In Abrahamson v. Illinois Department of Professional Regulation, 153 Ill.2d 76, 95-96, 606 N.E.2d 1111 (Ill. 1992), our Supreme Court said:

It is settled that, absent express statutory language to the contrary, agency members making the final decision need not be present when the evidence is taken, so long as they review the record of proceedings. [Citation.] Further, we agree with the appellate court, which has applied these principles to administrative proceedings under the Act. The court has specifically said that it is sufficient if even only one Board member listened to the live testimony. Procedural due process is afforded where the absent Board members reviewed the transcript before making findings and recommendations. [Citation.]

The Board's decision stated that it had "met and reviewed the entire Record to consider this Explanation and Clarification of Previous Findings and Decisions." (Board's Decision at 3). As such due process was met. Pundy, 211 Ill.App.3d at 487. Furthermore, Board member John Pircon, was present and listened to live testimony during Officer Peterson's hearing. (See R1 at 170 and Board's Decision at 18); Abrahamson, 153 Ill.2d at 95-96. Moreover, an agency's decision is not void if the hearing officer fails to issue a report of findings. See Ellison v. Illinois Racing Bd., 377 Ill.App.3d 433, 440, 878 N.E.2d 740 (1st Dist. 2007). In the cases cited by Officer Peterson, Daniels v. Police Bd. of City of Chicago, 338 Ill.App.3d 851, 863, 789 N.E.2d 424 (1st Dist. 2003), and Ruther v. Hillard, 306 Ill.App.3d 997, 1005, 715 N.E.2d 772 (1st Dist. 1999), the First District stated that "[i]f the evidence before a hearing officer is in such conflict that the weight and credibility of the witnesses' testimony is the determining factor in the case, due process may require that the hearing officer participate in the Board's decision by submitting a report of his conclusions and impressions." Daniels, 338 Ill.App.3d at 863 (citing Ruther, 306 Ill.App.3d at 1005). Thus, due process may require the hearing officer to participate in the Board's decision by submitting a report of his conclusions and impressions, but does not mandate it. Accordingly, the Court finds that Officer Peterson's due process rights were not violated.

Standard of Review for the Board's Decision

In reviewing an administrative agency's decision to discharge a public employee, courts invoke a two-step process. Walsh v. Board of Fire & Police Commissioners of the Village of Orland Park, 96 Ill.2d 101, 105, 449 N.E.2d 115 (Ill. 1983). First, the Court must determine whether the administrative agency's findings of fact are contrary to the manifest weight of the evidence. Williams v. Illinois Civil Service Commission, 2012 IL App (1st) 101344, ¶ 9. "A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." Gorski v. Board of Fire & Police Commissioners of City of Woodstock, 2011 IL App (2d) 100808, ¶ 34. Second, this Court must determine if the findings of fact provide a sufficient basis for the administrative agency's conclusion that there is cause for discharge. Williams, 2012 IL App (1st) 101344, ¶ 9. The second determination is measured by whether the agency's decision is arbitrary, unreasonable, or unrelated to the requirements of service. Id. The Court now turns to the former inquiry.

The Board's Finding of Fact

Officer Peterson contends that the Board's finding of fact that he obstructed and failed to disclose facts to law enforcement investigating Stacy Peterson's disappearance were against the manifest weight of the evidence. (Officer Peterson's Brief at 7). Officer Peterson argues that he was not obligated to notify law enforcement about the guns, prior to being contacted by the ISP, because he did not have "the slightest indication that Drew was a suspect in the disappearance of his wife." (Id.). Officer Peterson contends that his suspicion of Drew Peterson was not raised when he was given his guns because police officers have guns in their homes and often give these guns to other officers for safekeeping. (Officer Peterson's Brief at 8). Officer Peterson notes that police officers are aware that property may become damaged during a search, therefore, it was logical for him to assume that Drew Peterson wanted him to take his favorite guns to prevent damage or mishandling during law enforcement's search of his home. (Id.). Next, Officer Peterson argues that Board incorrectly found that his failure to inform law enforcement about the guns obstructed the investigation into Stacy Peterson's disappearance. (Officer Peterson's Brief at 9). Officer Peterson notes that law enforcement has not suggested that the guns had any relevancy to their investigation. (Officer Peterson's Brief at 8). Finally, Officer Peterson argues that the money Drew Peterson gave him had no relevance to Stacy Peterson's missing person investigation. (Officer Peterson's Brief at 9).

It is not the function of this Court to resolve factual inconsistencies or reweigh the evidence. Sindermann v. Civil Service Comm'n of the Village of Gurnee, 275 Ill.App.3d 917, 927, 657 N.E.2d 41 (2d Dist. 1995). A court of review considers the administrative agency's findings of fact to be *prima facie* true and correct. 735 ILCS 5/3-110; Launius v. Board of Fire & Police Commissioners of the City of Des Plaines, 151 Ill.2d 419, 427, 603 N.E.2d 477 (Ill. 1992). This Court must sustain the administrative agency's findings if the record contains any competent evidence to support the findings. Valio v. Board of Fire and Police Com'rs of Village of Itasca, 311 Ill.App.3d 321, 330, 724 N.E.2d 1024 (2d Dist. 2000). In this regard, the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence are matters particularly within the province of the administrative agency. Id. at 329.

As an initial matter, Officer Peterson does not challenge the specific rules violations found by the Board. Instead, Officer Peterson challenges the Board's overall finding that his actions obstructed the Illinois State Police investigation into Stacy Peterson's disappearance. Therefore, this Court will not discuss each specific violation. In regards to the guns, the Board, in relevant part, found that: (1) Drew Peterson gave Officer Peterson weapons for the sole purpose of concealing them from law enforcement; and (2) Officer Peterson voluntarily accepted the weapons and did not take any proactive measures to notify law enforcement about the weapons. (Board's Decision at 5).

First, in regards to whether Officer Peterson had "the slightest indication" that Drew Peterson was a suspect in Stacy Peterson's disappearance prior to his interview with the ISP, the record shows that Officer Peterson knew that Stacy Peterson's family had filed a missing person's report. (R2 at 224). Additionally, Drew Peterson informed Officer Peterson that Stacy Peterson's disappearance had made the news. (Id.). Furthermore, Drew Peterson informed Officer Peterson that he wanted him to hold the guns because he knew the police would be searching his house and he did not want the police to find the guns. (R2 at 225, 230). On cross-examination, Officer Peterson testified that he took Drew Peterson's guns because they were his father's favorites and he did not want them to become damaged during the police's search of his home. (R2 at 259). The Board did not find Officer Peterson's explanation credible. Issues of credibility are particularly within the province of the Board. Valio, 311 Ill.App.3d at 329. The

Board could have reasonably believed that Officer Peterson's action of taking Drew Peterson's guns demonstrated a conscious desire to obstruct law enforcement's investigation into Stacy Peterson's disappearance, rather than Officer Peterson's explanation. Given all the evidence in the record, it cannot be said that an opposite conclusion is clearly evident. Gorski, 2011 IL App (2d) 100808, ¶ 34.

Second, in regards to whether Officer Peterson's failure to inform law enforcement about the guns obstructed their investigation into Stacy Peterson's disappearance, the Board found that based on Officer Peterson's experience as police officer, it was implausible that he thought that Drew Peterson's attempt to conceal the weapons was not suspicious or relevant to the ISP investigation. (Board's Decision at 6). Given the record, it cannot be said that an opposite conclusion is clearly evident. Gorski, 2011 IL App (2d) 100808, ¶ 34. Officer Peterson admitted that he did not know the evidentiary potential that the guns had in law enforcement's investigation into Stacy Peterson's disappearance. (R2 at 235-236). Sheahan testified that after receiving the guns from Drew Peterson, Officer Peterson should have contacted law enforcement because those weapons could have been used against Stacy Peterson. (R3 at 374-375). Therefore, the Board could have reasonably believed that Officer Peterson's failure to contact law enforcement after receiving Drew Peterson's guns obstructed law enforcement's investigation into Stacy Peterson's disappearance and is not contrary to the manifest weight of the evidence. Williams, 2012 IL App (1st) 101344, ¶ 9.²

Third, in regards to whether the money Drew Peterson gave Officer Peterson had any relevance to the Stacy Peterson investigation, the record shows that Officer Peterson testified that Drew Peterson's action in giving him the money did not raise his suspicion that Drew Peterson had been involved in Stacy Peterson's disappearance. (R2 at 233). However, the Board found that Officer Peterson's statement about relevancy not to be credible and a strong indication that he lacked sound judgment. (Board's Decision at 11). As noted above, issues of credibility are within the province of the Board. Valio, 311 Ill.App.3d at 329. Furthermore, the record shows that Lawson testified that he considered the checks to be relevant information in Stacy Peterson's investigation. (R2 at 303). Therefore, the Board could have reasonably believed that Officer

² This Court notes that law enforcement's investigation into Stacy Peterson's disappearance is ongoing. The evidentiary value of the guns is still unknown.

Peterson's failure to disclose the checks during his initial interview with the ISP demonstrated a conscious desire to obstruct law enforcement's investigation into Stacy Peterson's disappearance and is not contrary to the manifest weight of the evidence. Williams, 2012 IL App (1st) 101344, ¶ 9.

The Board's Decision to Discharge Officer Peterson

Officer Peterson argues that based upon his exemplary record as a police officer his continued employment as a police officer would not be detrimental to the discipline and efficiency of the department. (Officer Peterson's Brief at 10). Officer Peterson contends that this Court should reverse his termination because it was unrelated to the needs and requirement of police service. (Id.).

The Village responds that Officer Peterson's violation of ten Oak Brook Police Department Rules and his obstruction of a criminal investigation, coupled with his lengthy disciplinary history, warranted Officer Peterson's termination. (Response at 9). Officer Peterson replies by disputing that he had a lengthy disciplinary history. (Reply at 4-6). Further, Officer Peterson notes that his misconduct was not related to his service as a police officer. (Reply at 6-7). Therefore, Officer Peterson contends that his termination should be reversed. (Reply at 8-10).

"Cause" has been defined as "some substantial shortcoming which renders the employee's continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as good cause for his no longer holding the position." Department of Mental Health and Developmental Disabilities v. Civil Service, 85 Ill.2d 547, 551, 426 N.E.2d 885 (Ill. 1981) quoting Kreiser v. Police Board of the City of Chicago, 40 Ill.App.3d 436, 441, 352 N.E.2d 389 (1st Dist. 1976). Because a police board is in the best position to determine the effect of an officer's conduct on the operations of the Department, its determination of "cause" is given considerable deference. Merrifield v. Illinois State Police Merit Board, 294 Ill.App.3d 520, 530, 691 N.E.2d 191 (4th Dist. 1998). It is well settled that an administrative agency's finding of cause for discharge commands respect and substantial deference and will stand even if the reviewing court considers another sanction to be

more appropriate. Walsh v. Board of Fire & Police Commissioners, 96 Ill.2d 101, 105, 449 N.E.2d 115 (Ill. 1983).

Officer Peterson relies on Kreiser v. Police Board of City of Chicago, 69 Ill.2d 27, 370 N.E.2d 511 (Ill. 1977), to support his argument that his conduct did not warrant discharge. In Kreiser, the court found discharge was unwarranted where a police officer was discharged for operating his vehicle without a proper license, disobeying the order of a superior officer, making a false oral statement to a superior officer and leaving the police station without being properly relieved and without logging out. Kreiser, 69 Ill.2d at 30-31. In contrast, the conduct here, involving the obstruction and failure to disclose facts in a missing person investigation, is considerably more serious than the failure to license a car or not logging out at the police station.

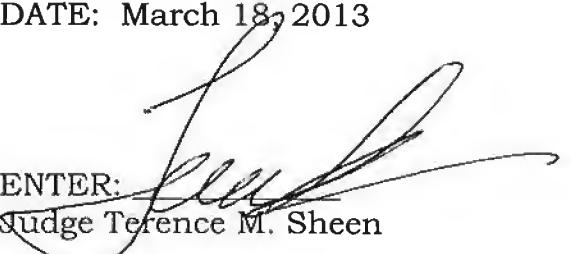
Officer Peterson reliance on Massingale v. Police Board of City of Chicago, 140 Ill.App.3d 378, 488 N.E.2d 1289 (1st Dist. 1986), where the court found police officer's discharge was unwarranted where she had been intoxicated while off duty, and driving a car with two open containers of alcohol, is also misplaced. Officer Peterson's conduct, unlike that of the officer in Massingale, was not the result of any transitory mental impairment or addiction.

Officer Peterson's action in regards to the guns and money, as described above, thwarted law enforcement's efforts to locate Stacy Peterson and it raised serious questions about Officer Peterson's honesty and integrity. "Trustworthiness, reliability, good judgment, and integrity are all material qualifications for any job, particularly one as a police officer." Village of Oak Lawn v. Human Rights Comm'n, 133 Ill.App.3d 221, 224, 478 N.E.2d 1115 (1st Dist. 1985). "[A]s the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness." Sindermann v. Civil Service Comm'n, 275 Ill.App.3d 917, 928, 657 N.E.2d 41 (2d Dist. 1995). In this case, it was in no way arbitrary or unreasonable for the Board to conclude that Officer Peterson exhibited conduct incompatible with continued service as a police officer. Therefore, this Court finds that Officer Peterson's conduct, when viewed in its entirety, warrants the sanction of discharge.

Conclusion

For the reasons stated above, the Court affirms the Board's decision to discharge Officer Peterson.

DATE: March 18, 2013

ENTER: 
Judge Terence M. Sheen